

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

JAMES EARL KENNER v. RICKY J. BELL, WARDEN

**Direct Appeal from the Circuit Court for Davidson County
No. 05C-189 Walter Kurtz, Judge**

No. M2005-00622-CCA-R3-HC - Filed August 31, 2005

Petitioner, James Earl Kenner, filed a petition for writ of habeas corpus in the Circuit Court of Davidson County. Defendant was convicted in 1994 of five counts of aggravated burglary, five counts of Class D felony theft, and one count of unlawful possession of weapon. His petition sought relief on the basis that all of his sentences were imposed in violation of his right to a jury trial as set forth in *Blakely v. Washington*, 542 U.S. 296 (2004). The trial court summarily dismissed the petition without an evidentiary hearing on the grounds that the judgments were not void on their face, and *Blakely v. Washington* was not to be retroactively applied. Petitioner timely appealed to this court and the State has filed a motion for this Court to affirm the dismissal pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals. Finding merit in the motion, we grant same and affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed Pursuant to Rule 20 of the Tennessee Court of Criminal Appeals**

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ., joined.

James Earl Kenner, Only, Tennessee, *pro se*.

Paul G. Summers, Attorney General and Reporter; Preston Shipp, Assistant Attorney General; and Victor S. (Torry) Johnson III, District Attorney General, for the appellee, the State of Tennessee.

MEMORANDUM OPINION

Relief by the writ of habeas corpus is available only when it appears on the face of the judgments or the records that the convicting court was without jurisdiction to convict or sentence the petitioner or that the sentence of imprisonment has expired. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993). The trial court to which the petition is addressed, may summarily dismiss the petition without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions are void. *Passarella v. State*, 891 S.W.2d 619 (Tenn. Crim. App. 1994).

According to the judgments attached to the petition, Petitioner was sentenced, in 1994, to a total effective sentence of seventy-five years for the convictions. Obviously, the sentences have not expired. Furthermore, in *State v. Gomez*, 163 S.W.3d 632 (Tenn. 2005), our supreme court held that the sentencing scheme in Tennessee does not violate the Sixth Amendment of the United States Constitution, as that amendment is interpreted in *Blakely*, and therefore, Petitioner's alleged ground for relief does not result in the judgments being void. Petitioner, therefore, is not entitled to relief in this appeal.

CONCLUSION

The judgment rendered by the trial court in this case, dismissing the petition for writ of habeas corpus, was in a proceeding before the trial judge without a jury, and was not a determination of guilty, and the evidence does not preponderate against the finding of the trial judge. Furthermore, no error of law requiring a reversal of the judgment is apparent on the record. Accordingly, the judgment of the trial court is affirmed pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals.

THOMAS T. WOODALL, JUDGE